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Supreme Court, U. S.
FILED
MAY 10 1973
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1972

No. 72-1523

MARK BRIAN PRICE,
Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES,
Respondent.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Real Party in Interest.

PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES.

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WESTERN PRINTING COMPANY, WHITTIER—OXBOW 8-1752

TOPICAL INDEX

	Page
Jurisdiction	3
Opinon Below	3
Constitutional and Statutory Provisions and Rules Involved	3
Statement of Facts	3
Questions Presented	7
Reasons For Granting the Writ	9

TABLE OF CASES AND AUTHORITIES CITED

Cases

Appleyard v. Massachusettts, 203 U.S. 222, L1 L.ed. 161 9
Compton v. Alabama, 214 U.S. 1 11
Cook v. Hart, 36 L.ed. (U.S.) 934 9
Darr v. Burford, 329 U.S. 200 10
Day v. Kein, 2 F. 2d 966 10
Dickey v. Florida, 398 U.S. 30, 26 L.ed. 2d 26 ..... 12, 13
Ex parte Hawk, 321 U.S. 114 10
Ex parte Yerger, 8 Wall. 85, 75 U.S. Bk.; 19 L.ed. 332 9
Fay v. Nia, 372 U.S. 391, 9 L.ed. 2d 837 ..... 9, 10, 13
Frank v. Mangum, 237 U.S. 309, 59 L.ed. 969, 983 11
Garner v. Louisiana, 368 U.S. 157, 7 L.ed. 2d 207 11
Green v. U.S., 355 U.S. 184 12

Page

Harris v. Superior Court, 209 Cal. 55, 61 13
Hartman v. Weggeland, 19 Utah 2d 229, 429 P. 2d 978 4
Home Insurance Co. v. Dick, 281 US 397 9
Kilsberg v. Northeast Airlines, 9 NY2d 34, 211 NYS2d 133, 172 NE2d 526 9
Klopfer v. North Carolina, 386 U.S. 213, 18 L.ed. 2d 1 ..... 8, 12, 13
Mark Brian Price v. Peter J. Pitchess 2
Moorer v. South Carolina, 240 F. Supp. 529 10
Pearson v. Northeast Airlines, 309 F.2d 553 (2nd Cir.) 9
People v. Fegelman, 66 Cal. App. 2d 950, 955 13
People v. Godlewski, 22 Cal. 2d 677, 682 13
People v. Molinari, 23 Cal. App. 2d Supp. 761 12
Roberts v. Riley, 116 U.S. 544 9
Sealfon v. U.S., 332 U.S. 575 12
Smith v. Bennett, 365 U.S. 708, 6 L.ed. 2d 39, 43 12
Smith v. Hooey, 393 U.S. 374, 21 L.ed. 2d 647 ..... 12, 13
Thomson v. Continental Ins. Co., 66 Cal. 2d 738, 427 P. 2d 765 13
Thompson v. Louisville, 362 U.S. 199, 4 L.ed. 2d 654 11
Tom Tong, In re, 108 U.S. 556, 27 L.ed. 826 13
U.S. v. Adams, 281 U.S. 202, 74 L.ed 807 12
U.S. v. De Angelo, 138 F. 2d 466 12
U.S. v. Hamilton, 3 U.S. (3 Del.) 17, Bk. 1, 490 9
U.S. v. Marion, 404 U.S. 307, 30 L.ed. 2d 468 12
U.S. v. Meyering, 74 F. 2d 716 11

Page

U.S. v. Oppenheimer, 242 U.S. 85, 87, 61 L.ed. 161, 164 12

U.S. v. Provo, 350 U.S. 857, 100 L.ed. 761 12

Constitution

U.S. Constitution, Article 4 ..... 2, 3

Statutes

28 U.S.C.A. 2241, 2251-2255 10

18 U.S.C.A. Secs. 662, 663 11

IN THE

Supreme Court of the United States

October Term, 1972

No.....

MARK BRIAN PRICE,
Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES,
Respondent.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Real Party in Interest.

PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES.

To the Honorable Chief Justice Warren Burger and to the Honorable Associate Justices of the Supreme Court of the United States:

Your petitioner, Mark Brian Price, respectfully petitions for a writ of certiorari directed to the Superior Court of the State of California for the County of Los Angeles and to the United States District Court for the Central District of Caliornia in which a petition for writ of habeas corpus is pending, and in respect thereto sets forth as follows.

JURISDICTION

Jurisdiction is conferred by Title 28, Section 1257, U.S.C.; Title 18, Sections 662, 663, U.S.C.; U.S. Constitution, Article 4, Section 2.

A petition for a writ of habeas corpus re extradition was filed in the Superior Court of the State of California for the County of Los Angeles, the first court of original jurisdiction of habeas corpus proceedings. It was denied on January 29, 1973.

A petition for writ of habeas corpus was filed in the Court of Appeal, Second Appellate District, State of California, on March 1, 1973, the second court having jurisdiction of habeas corpus and denied without opinion on March 6, 1973.

Thereafter, a petition for hearing was filed in the Supreme Court of California, the highest court of the state, on March 16, 1973 and denied by that Court on April 4, 1973. (Appendix "A") This exhausted state court jurisdiction.

Another petition for writ of habeas corpus was filed in The United States District Court for the Central District of Caliornia, No. 73-829-RJK, entitled *Mark Brian Price v. Peter J. Pitchess,* Sheriff of Los Angeles County, State of California, and is presently pending. Chief Judge Albert Lee Stephens granted a stay of execution April 13, 1973 pending application to this Court for a writ of certiorari and its determination.

OPINION BELOW

There is no opinion below, all matters having been denied without opinion.

CONSTITUTIONAL AND STATUTORY PROVISIONS AND RULES INVOLVED

Article 4, Section 2, U.S. Constitution; Fifth, Sixth and Fourteenth Amendments, U.S. Constitution; Title 18 U.S.C. Sections 662, 773; Rule 49, Rules of the United States Supreme Court. Title 18 Sec. 3182 U.S.C.

STATEMENT OF FACTS

Mark Price was originally arrested in Utah and charged with possession of narcotics for sale in the Justice Court for the South Precinct, County of Davis, State of Utah. He posted bail of $4,000 and was arraigned there on November 25, 1969.

A motion was made in the Utah Court to suppress the evidence, on the grounds of illegal search and seizure, which motion was heard on January 12, 1970 and taken under advisement. On January 15, 1970 the Court heard further arguments on a motion to dismiss and ordered the evidence obtained by the search warrant suppressed. The County Attorney then moved to dismiss all charges since he stated there was no other evidence than that which was suppressed by the court.

Following the hearing on January 15, 1970, Mark

Price left the State of Utah believing that the matter had been dismissed and finally disposed of.

On January 23, 1970 the Court in Utah received a notice of appeal from the prosecuting agency and sent all proceedings on February 2, 1970 to the District Court. A motion to dismiss the appeal was filed in the District Court of Davis County, State of Utah by the Utah attorney for petitioner. On December 29, 1970, the Utah Court having considered the motion to dismiss the appeal and the authorities in support thereof and in opposition thereto, and being fully advised, found that the motion to dismiss should be and the same was granted by the Honorable Thornley K. Swan, Judge, on the basis of a motion to dismiss on the ground that where a prosecuting agency had made a motion to dismiss it could not thereafter appeal, citing *Hartman v. Weggeland, 19 Utah* 2d 229, 429 P 2d 978.

In the meantime, after the departure of Mark Price from the State of Utah, a warrant of arrest was issued on January 26, 1970, alleging unlawful sale of hallucinogenic drugs at the same address, to-wit 730 West 2125 South, Woods Cross, Davis County, Utah.

On December 12, 1972 R. D. Breen, a Los Angeles County Deputy Sheriff, filed a fugitive complaint in Los Angeles County in the Municipal Court, Case No. A292077, charging "Brian Michael Price" with leaving the State of Utah after the commission of the offense of unlawful sale of hullucinogenic drugs, based on a complaint issued in the State of Utah, County of Davis, on

or about January 26, 1970, but the fugitive complaint did not and does not allege that the accused is the same man previously arrested nor explain or excuse the delay of nearly three years or that the accused had any knowledge of the issuance of the Utah complaint, or that it had not been previously heard and determined favorably to the accused by a Utah Judge; that the search warrant and search were illegal in that the search was illegally made at 730 West 2125 South, Woods Cross, Davis County, Utah, and the search was for narcotics, LSD, marijuana and paraphernalia.

Nowhere in the affidavit for the arrest of the accused was there any identification that Brian Michael Price was Mark Price. The Utah warrant of arrest, dated the 26th day of January, 1970, charges "State of Utah, Plaintiff, v. Mark Price, Defendant" with the offense of unlawful sale of hallucinogenic drugs. The complaint issued in Layton City, Davis County, State of Utah, charges "Mark Price" with unlawful sale of hallucinogenic drugs, as follows: "That the said Mark Price at the time and place aforesaid did sell a depressant, stimulant, or hallucinogenic drug," etc. The fugitive complaint charges a "Brian Michael Price" with the offense, not Mark Price. A copy of the warrant of arrest, the complaint and the fugitive complaint are attached hereto marked Appendices "B," "C" and "D," respectively, and made a part hereof. Nowhere do they show that there is a criminal complaint in the State of Utah for "Michael Brian Price" and therefore the arrest was and is in violation of due

process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

There is no evidentiary support of the commission of any crime by a "Brian Michael Price."

Petitioner was arrested on the felony fugitive warrant entitled "The People of the State of Caliornia v. Brian Michael Price" on December 12, 1972. No complaint or indictment exists in Utah for "Brian Michael Price."

After the denial by the State of California in the Superior Court of the County of Los Angeles, the Court of Appeal, Second Appellate District, State of California, and the Supreme Court of the State of California, petitioner filed a petition for writ of habeas corpus on April 13, 1973, which was heard by the Honorable Albert Lee Stephens, who granted a stay of execution pursuant to Title 28, Section 2101(f), U.S. Codes, and ordered that extradition be stayed for a period of 30 days and if within that time a petition for writ of certiorari is filed in the United State Supreme Court, then the stay shall continue until the final disposition of the case and the return of the order disposing of the matter. He also assigned and transferred the case to U.S. District Judge Robert J. Kelleher, where the matter is now pending.

The petitioner has therefore exhausted all his state remedies and is proceeding under federal law and his constitutional rights thereunder.

QUESTIONS PRESENTED

1. Whether habeas corpus in California, the residence of the accused is an appropriate remedy to challenge an extradition proceeding, and the non-existence of an arrest warrant in the State of Utah under the name in the fugitive warrant.

2. Whether a fugitive warrant can legally be issued for the arrest of Brian Michael Price, against whom no complaint has been issued or outstanding in Utah.

3. Whether "Mark Brian Price" can be arrested and extradition proceedings instituted against him when there is no fugitive warrant issued for Mark Brian Price.

4. Whether an extradition proceeding can be challenged by habeas corpus in California, the residence state of petitioner, where there has been a trial in the demanding state and where the evidence was suppressed in that state as in violation of the Fourth Amendment, U.S. Constitution, and the case in the demanding state dismissed, and whether the demanding state is thereafter estopped from proceeding.

5. Whether an extradition proceeding can be challenged and determined in the residence state of petitioner by habeas corpus on the ground of denial of speedy trial in violation of the Sixth and Fourteenth Amendments, U.S. Constitution (as well as esoppel and res judicata and 4th amendment rights and lack

of identity) where there has been a lapse of almost three years between the time that a complaint was issued in the demanding state and the time that it was served in violation of the principles set forth in *Klopfter v. North Carolina* 386 U.S. 213.

6. Whether jeopardy has attached and petitioner's rights would be violated under the Fourteenth Amendment, U.S. Constitution, if he is the party later proved to be Mark Price, where case was tried in Utah and dismissed after the evidence was suppressed as illegally searched and seized in violation of the 4th amendment U.S. Constitution.

7. Whether Utahs present claim for the custody of Mark Price under a fugitive warrant in the name of Brian Michael Price would, in any event, violate the Sixth Amendment, U.S. Constitution (as well as the Fourth Amendment) and deny speedy trial guaranteed by the Sixth and Fourteenth Amendments, where there has been a lapse of almost three years since the issuance of the complaint, and the arrest is sought under a different name.

8. Whether the law of the demanding state or the law of the state where the accused is a resident and is arrested, or whether the Sixth Amendment to the Constitution of the United States and State and federal law regarding speedy trial in the state of the accused governs the right to extradite and remove an accused.

9. Whether a state has a right and duty to protect its residents in the courts of its state before one is

removed by extradition to another state and courts of a party's non-residence without such full and fair hearing before such removal and hearing in a foreign locality and of his constitutional rights under the U.S. Constitution.

10. Whether, where an issue is characterized as procedural rather than substantive in nature, the law of the forum is to be applied rather than the law of the demanding state. (*Kilsberg v. Northeast Airlines,* 9 NY2d 34, 211 NYS2d 133, 172 NE2d 526; *Pearson v. Northeast Airlines,* 309 F.2d 553 (2nd Cir.); *Home Insurance Co. v. Dick,* 281 US 397)

REASONS FOR GRANTING THE WRIT

Habeas corpus is an appropriate remedy for testing extradition proceedings. (*Roberts v. Riley,* 116 U.S. 544; *U.S. v. Hamilton,* 3 U.S. (3 Dell.) 17, Bk 1, 490 note; *Ex parte Yerger,* 8 Wall. 85, 75 U.S. Bk. 19 L.ed. 332; *Appleyard v. Massachusetts,* 203 U.S. 222, 51 L.ed. 161; *Cook v. Hart,* 36 L.ed. (U.S.) 934)

Where allegations of habeas corpus petition raise constitutional claims presented by petitioner, the United Courts including those located at one's residence have power to consider every federal constitutional claim presented by petitioner, and determine them even if these claims were passed upon in the State proceedings. (*Fay v. Noia,* 372 U.S. 391, 9 L.ed. 2d 837)

Where claims did not appear to be frivolous, the

federal Court could stay the execution pending determination of the merits of the petition. (28 U.S.C.A. 2241, 2251-2255; *Moorer v. South Carolina,* 240 F. Supp. 529)

Proceedings for interstate extradition are governed by federal statutes and a prisoner held contrary to the provisions of those statutes is detained in violation of the Constitution and laws of the United States, and may invoke the jurisdiction of the federal Court by writ of habeas corpus to inquire into and determine the legality of his detention. (*Day v. Kein,* 2 F.2d 966)

Pending review of a decision in habeas corpus proceeding commenced before a court, justice or judge of the United States for the release of a prisoner, a person having custody of the prisoner shall not transfer custody to another unless such transfer is directed in accordance with the provisions of this rule. (Rule 49, Rules of the United States Supreme Court)

Petitioner exhausted his state Court remedies and therefore had a right to apply to the federal Court, (*Ex parte Hawk,* 321 U.S. 114; *Darr v. Burford,* 329 U.S. 200; *Fay v. Noia,* 372 U.S. 391, 9 L.ed. 2d 837) and have his rights determined in the Courts and State of his residence.

The right to raise on habeas corpus in an extradition proceeding the total lack of evidentiary support before one is extradited and removed from his residence and removed to another state is a constitutional

right that applies to every citizen. *(Garner v. Louisiana,* 368 U.S. 157, 7 L.ed. 2d 207)

There is no evidence that there is a complaint on file in the State of Utah against "Brian Michael Price."

See also: *Thompson v. Louisville,* 362 U.S. 199, 4 L.ed. 2d 654.

The alleged fugitive has the right not to be imprisoned or dealt with by states in disregard of the safeguards provided by the federal Constitution and statutes. (18 U.S.C.A. Secs. 662, 663; Constitution, Article 4, Sec. 2)

In *U.S. v. Meyering,* 74 F. 2d 716, the Court said: "The statute is one involving the substantial rights of citizens, and its essential elements must be strictly followed. Ex parte Morgan (D.C.) 20 F. 298, and Ex parte Hart (C.C.A.) 63 F. 249, 28 L.R.A. 801. Only by faithfully following the provisions of the statute may a person be lawfully deprived of his liberty and extradited from an asylum state to another state, there to be tried for the commission of a crime. The alleged fugitive has a right not to be imprisoned or dealt with by the states in disregard of those safeguards provided by the Constitution and statutes of the United States. *Compton v. Alabama,* 214 U.S. 1."

The fundamental principle of res judicata is that it is as applicable to decisions of criminal courts as to those of civil jurisdiction. (*Frank v. Mangum,* 237 U.S. 309, 59 L. ed. 969, 983)

The doctrine of res judicata required that the government be foreclosed by the result in the first trial. (*U.S. v. Adams,* 281 U.S. 202, 74 L.ed. 807; *Sealfon v. U.S.,* 332 U.S. 575; *U.S. v. Oppenheimer,* 242 U.S. 85, 87, 61 L.ed. 161, 164; *U.S. v. De Angelo,* 138 F. 2d 466)

The Fifth Amendment to the Constitution of the United States prohibition against double jeopardy: *Green v. U.S.,* 355 U.S. 184.

The Sixth and Fourteenth Amendment right to speedy trial: *U.S. v. Provoo,* 350 U.S. 857, 100 L.ed. 761; *U.S. v. Marion,* 404 U.S. 307, 30 L.ed. 2d 468, and numerous cases cited, including *Dickey v. Florida,* 398 U.S. 30, 26 L.ed. 2d 26; *Smith v. Hooey,* 393 U.S. 374, 21 L.ed. 2d 647; *Klopfer v. North Carolina,* 386 U.S. 213, 18 L.ed. 2d 1).

The petitioner is presently on bail of $5,000 issued out of the Los Angeles Municipal Court, the first court having habeas corpus.

A plaintiff or petitioner in a civil proceeding who is a resident and citizen of the State of California is entitled to obtain a hearing and judicial determination of his right in the courts of this state and under its laws. (*Thomson v. Continental Ins. Co.,* 66 Cal. 2d 738, 427 P. 2d 765) The state protects its residents. The argument of forum non conveniens cannot be applied to such a case. A motion for change of venue or dismissal on this theory is inapplicable. A petitioner is entitled to have review of his grievances in this state.

(*Thomson v. Continental Ins. Co., supra)* and not removed until they are determined.

A habeas corpus proceeding is civil in nature. (*In re Tom Tong,* 108 U.S. 556, 27 L.ed 826; *Fay v. Noia,* 372 U.S. 391, 9 L.ed. 2d 860; *Smith v. Bennett,* 365 U.S. 708, 6 L.ed. 2d 39, 43)

The right to a speedy trial and hearing is guaranteed by the Sixth Amendment and should be governed by the forum where the defendant is arrested. (*Klopfer v. North Carolina,* 386 U.S. 213, 18 L.ed. 2d 1; *Dickey v. Florida,* 398 U.S. 30, 26 L.ed. 2d 26; *Smith v. Hooey,* 393 U.S. 374, 21 L.ed. 2d 607)

In *Harris v. Superior Court,* 209 Cal. 55, 61, the Court held that the delay of 20 months before the cases were set for trial was a denial of speedy trial, and in *People v. Fegelman,* 66 Cal. App. 2d 950, the Court held that a delay of more than 60 days after the filing of the information, where he did not consent to a continuance for that period, was a denial of speedy trial. California statutes also provide for mandatory dismissal upon the motion of the defendant where a case is not brought to trial within the statutory period unless some good reason for delaying the trial is presented. (*People v. Fegelman,* 66 Cal. App. 2d 950, 955; *People v. Godlewski,* 22 Cal. 2d 677, 682; *People v. Molinari,* 23 Cal. App. 2d Supp. 761)

A state has a right and duty to safeguard the liberty of its citizens and to apply its laws to those arrested within its borders. It has a right to determine that an accused is unreasonably prejudiced by a delay of nearly three years in removing him to another state of non-residence.

One of the complaints in the Declaration of Independence was that the King had American residents removed to England for trial.

Your petitioner prays for a writ of certiorari directed to the Superior Court of the County of Los Angeles, State of California, and to the United States District Court for the Central District of California, to grant the writ of habeas corpus and to discharge the petitioner for all the reasons heretofore stated.

Respectfully submitted,

MORRIS LAVINE,
Attorney for Petitioner

Of Counsel:

JOAN CELIA LAVINE
PETER L. KNECHT

APPENDIX "A"

ORDER DUE
April 5, 1973

ORDER DENYING HEARING

AFTER JUDGMENT BY THE COURT OF APPEAL

2nd District, Division 2, Crim. No. 23103

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

IN RE PRICE ON HABEAS CORPUS

FILED
APR 4 1973
G. E. BISHEL, Clerk
S. F. Deputy

Petition for hearing DENIED.

WRIGHT
Chief Justice

G. E. BISHEL, Clerk of the Supreme Court of [illegible]

73

APPENDIX "B"

47-19060-5046-26

Justice Court, within and for LAYTON CITY Precinct
Davis County, State of Utah

Before Honorable DOUGLAS L. CORNABY, Justice of the Peace

THE STATE OF UTAH, Plaintiff
vs.
MAX PRICE
Defendant

WARRANT OF ARREST

THE STATE OF UTAH

To any Sheriff, or any Constable or Policeman of the State of Utah, Greeting:

A complaint, upon oath, having been made this 26 day of JANUARY A.D. 19 70 before me douglas L. Cornaby a Justice of the Peace within and for Layton City District, County of Davis, State of Utah, by JOE BALLANTYNE that offense of UNLAWFUL SALE OF HALLUCINOGENIC DRUG has been committed, and accusing MAX PRICE thereof.

You are therefore commanded forthwith to arrest the above named MAX PRICE and bring HIM before me, forthwith, at my office in said Precinct and County, or, in case of my absence or inability to act, before the nearest and most accessible magistrate in this County, to answer to the charge preferred against HIM.

This warrant of arrest may be served either day or night. Bail is fixed at $ [illegible] of Utah.

IN WITNESS WHEREOF I have hereunto set my hand this 26 day of January A.D. 19 70.

Douglas L. Cornaby
Justice of the Peace

APPENDIX "C"

472-19060-2046-289

In the City Court within and for LAYTON City
Davis County, State of Utah

Before Honorable DOUGLAS L. CORNABY, City Judge
and Ex-Officio Justice of the Peace

THE STATE OF UTAH, Plaintiff
vs.
MARK PRICE, Defendant

COMPLAINT

On this 26 day of JANUARY A. D. 1970, before me, DOUGLAS L. CORNABY, Judge and Ex-Officio Justice of the Peace, within and for LAYTON City Court, Davis County, State of Utah, personally appeared ROB BALLANTYNE who being duly sworn by me on h is oath complains and says that MARK PRICE on the 19 day of November, A. D. 19 69, at Woods Cross County of Davis, State of Utah, did commit the felony of UNLAWFUL SALE OF HALLUCINOGENIC DRUG (58-33-6(1) as follows, to-wit: That the said MARK PRICE at the time and place aforesaid:

did sell a depressant, stimulant, or hallucinogenic drug,

contrary to the provisions of the Statutes of the State aforesaid, in such cases made and provided, and against the peace and dignity of the State of Utah.

Rob Ballantyne
Complainant

Subscribed and sworn before me the day and year first above written.

Douglas L. Cornaby
Judge

APPENDIX "D"

IN THE MUNICIPAL COURT OF LOS ANGELES JUDICIAL DISTRICT
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

COMPLAINT
FELONY
FUGITIVE

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
v.
BRIAN MICHAEL PRICE
Defendant

No. A292077
FILED
DEC 1 [illegible]
LOS ANGELES MUNICIPAL DIST. CLERK

Personally appeared before me this 12th day of December 1972,
R.D. Breen
of the County of Los Angeles, State of California, who, being duly sworn on oath, complains and says: That he is informed and believes and therefore alleges that the said
BRIAN MICHAEL PRICE
Jan 12
~~convicted~~ charged was ~~/~~ ~~convicted~~ of a crime in the State of Utah
to wit, UNLAWFUL SALE OF HALLUCINOGENIC DRUGS
That thereafter, on or about the 26th day of January, 1970,
at and in the County of Davis State of Utah
the said BRIAN MICHAEL PRICE
was complained against and charged with the crime of UNLAWFUL SALE OF HALLUCINOGENIC DRUGS
a felony, before a duly and regularly elected, qualified and acting Justice of the Peace
in and for the county and state aforesaid, who then and there had jurisdiction to examine and commit for trial in the proper court persons charged with said offense, and a warrant of arrest was duly and regularly issued for the arrest and apprehension of said defendant charging him with the said offense, and said charge is now pending and undetermined.

That after the said offense had been committed, the said defendant did voluntarily leave the said state, and the said defendant was and now is a fugitive from justice and is now in the County of Los Angeles, State of California.

Said complainant therefore prays that a warrant may be issued for the arrest of said defendant who may then be dealt with according to law.

Subscribed and sworn to before me on
December 12, 1972,
Clerk of Municipal Court of the Los Angeles Judicial District
Judge of the above entitled Court

Approved by ~~[illegible]~~ District Attorney
By JOSEPH P. BUSCH, JR.
THOMAS D. MILLER
Deputy

BAIL RECOMMENDED
$ 2,000.00

WITNESSES
File #472-10060-2046-280
R.D. Breen, LASD Fugitive Detail, x21141

CII No. (or other)
C/Fugitive